

REMARKS

The rejection of the sole claim as being unpatentable over Berings et al., in view of Russo et al. under 35 U.S.C. § 103(a) is traversed, and reconsideration is respectfully requested.

The claim has been amended in a manner relevant to the new ground of rejection by clarifying that the product in question is one suited uniquely for prepared foods. In this connection, Applicant pointed out in his original disclosure (see Description of the Invention) that one of the features it includes is the date of preparation and also that the packaging assures the consumer that the packaging contents have not been adulterated from the time of their preparation.

At the outset, Applicant notes that the sachet disclosed in the Berings et al., patent is not one designed for storing prepared food. To the contrary, the sachet is intended to allow boiling of the bag contents, e.g., uncooked rice. One of ordinary skill in the art will understand that the type of permeability required to allow boiling water to enter the sachet for cooking the rice or the like is of a different nature than the types of openings used for allowing prepared or ready-to-eat food to transpire. That is, one of ordinary skill in the art seeking to improve upon the type of prior art packaging discussed by Applicant at the outset of his disclosure would never have looked to the Berings et al., boil-on-bag sachet absent impermissible hindsight even assuming, for argument's sake, that

the teachings of the Russo patent would have been combinable with the Berings et al., patent. One fallacy in the rejection is the resort to the Berings et al., patent in the first place.

Applicant would not agree, however, that the Russo patent is germane to the present invention. Indeed it is even more remote from the present invention than the Berings et al., patent and is arguably unrelated even to the latter. Applicant notes that Russo teaches the use of a low moisture permeability material unlike that of Berings et al., because Russo does not want water to enter the bag. Contrary to the contention in the Examiner's Answer, Russo does not teach or even suggest a sanitary and breathable packaging. Rather, Russo appears to direct his invention in the form of a two-ply laminate to the type of bag sold under such trademarks such as "Hefty" and "Zip-Lock" where leftovers are stored for later reheating in boiling water or more recently, microwave ovens. Given the nature of Russo's boilable pouch, one can only conclude that there would have been no motivation, save impermissible hindsight, to look to his teachings for modifying the water permeable sachet disclosed by Berings et al.

The Examiner's Asnwer suggests that the motivation for using the Russo material in the Berings et al., sachet would be to obtain more durable packaging. Applicant notes that the Russo patent says nothing about durability. Nor does the Berings et al., patent appear to be concerned with that feature. The genesis for the motivation seems to have arisen contemporaneously with the Examiner's

Answer, not before. As such this is the apotheosis impermissible hindsight. Indeed, the fact that Russo's laminated, low water permeability structure would defeat the needed high water permeability needed for the Berings et al., sachet should be enough by itself to demonstrate the lack of a *prima facie* case of obviousness based on these two patent references.

Applicant also believes it appropriate to comment upon the rejection of the sole claim based upon the Raley et al., and Keller patents. Applicant relies on his earlier comments and incorporates them here by reference. Instead, he will focus on the responsive arguments raised in the Examiner's Answer as they relate to the alleged "easy opening" motivation used for combining the Raley et al., and Keller patents.

But first, Applicant should note that, like Berings et al., Keller teaches the use of a cooking pouch for rice and the like intended for water permeability. Transpiration for allowing prepared food to remain unadulterated plays no part in the thinking of Keller. In light of the foregoing amendment to the claim, Applicant also notes that the Raley et al., packaging material is not aimed at providing sanitary and breathable packaging for prepared foods. Applicant has previously pointed out the structural differences between his invention and the Raley et al., packaging structure whose primary aim is to allow things such as sterile gauze, not food, to be sterilized within the packaging. That is, the Raley

et al., patent contains totally non-analogous teachings, resort to which can only have been the result of the exercising of impermissible hindsight.

As to the argument that, in the Examiner's view, the claim under consideration is "an intermediate packaging" (whatever that means) and therefore the Raley et al., intermediate packaging "meets" the limitations of the claim, Applicant would like to remind the Office that by the Examiner's own rejection, the Raley et al., patent does not "meet" the claim limitations because the rejection is not one of anticipation but of obviousness. Thus, the argument about a reference's inherency or capability is likewise unavailing.

Applicant would note the following; considering that the person skilled in the art is one of ordinary skill in the packaging art, she would not have been motivated to use the Raley et al., patent because it pertains to a completely unrelated and different field of technology. That patent belongs to the field of sterilization of surgical material, as above-noted, whereas the instant invention is related to the field of the packaging of ready-to-consume or prepared food products. Careful and thorough examination of both the Raley et al., and the Keller patents shows lack of any contemporaneous suggestion or incentive (i.e., contemporaneous with the date of Applicant's invention) that would have motivated the person skilled in the art to combine the aforementioned documents.

Furthermore, the combination of the Raley et al., and Keller patents would result in a packaging whose holes do not serve for their intended transpiration purpose. The holes described in the Raley et al., patent are adapted to permit the forced flow of steam through them as disclosed in column 3, lines 32-35, column 4, lines 38-39 and in column 5, lines 36-37. The arrangement according to which the "perforations in one layer are misaligned with the perforations in the other layer" (Raley, column 2, lines 38-42) leaves an extremely narrow space for the air to flow through, adding a pressure loss which must be compensated by forcing the air or steam to pass through such holes. Natural circulation or air would be hindered by such a limited area section, causing the aeration achieved to be insufficient to ensure the "improved conditions of consumption" of the food product packed therein.

In summary, the two rejections do not set forth a *prima facie* case of obviousness based upon substantial record evidence. Under the circumstances, early and favorable action is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and

Serial No. 10/803,151
Amendment and Reply Under 37 C.F.R. § 1.111
Attorney Docket No. 100719.52887US

please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #100719.52887US).

Respectfully submitted,

January 8, 2007



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